

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations
(Victoria and Refugio, Texas)

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MB Docket No. 05-154
RM-11224

TO: Marlene H. Dortch, Secretary

DOCKET FILE COPY ORIGINAL

For transmission to: John A. Karousos, Assistant Chief
Audio Division, Media Bureau

COMMENTS AND COUNTERPROPOSAL

1. Voz de la Raza ("Voz") hereby submits these Comments and Counterproposal in response to the Notice of Proposed Rulemaking ("NPRM"), DA 05-768, released March 25, 2005, in the above-captioned proceeding. In the *NPRM* the Commission proposed the allotment of Channel 290A at Victoria, Texas, as that community's sixth FM commercial broadcast service. To accommodate that proposed allotment, the *NPRM* also proposed an alternate reference point for vacant Channel 291A at Refugio, Texas, and a site restriction for the proposed Victoria allotment. Voz hereby counterproposes that Channel 290A be allotted to Austwell, Texas, as that community's first radio service:

City	Has	Proposed
Austwell, TX	--	290A

2. As set forth in the accompanying Allocation Statement and Allocation Study, with reference coordinates of 28° 23' 40" North and 96° 41' 17" West, the allotment proposed hereby

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will provide a 70 dBu signal to the entire city of Austwell, and will otherwise comply with the Commission's allotment standards.¹

3. Austwell is without question a community entitled to local broadcast service. Known as "the Gateway to the Aransas National Wildlife Refuge", Austwell, Texas, is a city with a population of 192, according to the 2000 U.S. Census. Austwell was founded in 1912 and incorporated by an election in 1914.² It has a city hall³, a post office⁴, and municipally-provided water service.⁵ Austwell has installed a water purification tower and is planning the replacement and upgrading of a sewage drainage system.⁶ Additionally, the community has constructed the Wilson Heard city park at the entrance to the city, featuring a pavilion and sports facilities.⁷ Through the Austwell-Tivoli Independent School District, it administers an elementary and a high school.⁸ Businesses with Austwell addresses include Wise Oil Co.,

¹ As indicated in the Allocation Statement, in order to avoid short-spacing to Channel 291A at Refugio, an alternate set of reference coordinates – 28° 19' 44" North and 97° 24' 59" West – are proposed. Operation on Channel 291A from those coordinates would result in delivery of a 70 dBu signal to the entire city of Refugio.

² See, e.g., Handbook of Texas Online: AUSTWELL, TX (<http://www.tsha.utexas.edu/handbook/online/articles/view/AA/hla30.html>) (visited 5/5/2005).

³ See Austwell Texas Resource Guide (<http://www.usacitiesonline.com/txcounty/austwellgov.html>) (visited 5/5/2005).

⁴ See United States Postal Service – Post Office Locator (<http://www.switchboard.com/bin/cgidir.dll?MEM=1355&PR=139&ST=2&CSF=LocatorPostOffice&cid=1222&SD=100&A=&T=austwell&S=tx&Z=&Search.x=0&Search.y=0&Search=Search>) (visited 5/10/2005).

⁵ See Texas Community Profiles, Texas Communities (<http://community.txed.state.tx.us/communities/commpages/305.htm>) (visited 5/9/2005).

⁶ See Austwell Texas Home Page (<http://hometown.aol.com/austwell/austwell.html>) (visited 5/5/2005).

⁷ *Id.*

⁸ See Search for Public School Districts – District Detail (http://nces.ed.gov/ccd/districtsearch/district_detail.asp?Search=2&ID2=4809000&DistrictID=4809000&details=1) (visited 5/5/2005).

Conoco, Inc., Hopper's Landing, and Austwell Aqua Farm, Inc.⁹ Also available are gas stations, convenience stores, restaurants, and a privately-owned-and-operated RV park.¹⁰ Austwell is close to the Aransas National Wildlife Refuge, the winter habitat of the endangered Whooping Crane, the tallest bird in North America.

4. While Austwell is clearly a community deserving of local broadcast service, at present no broadcast stations or vacant channels are authorized to Austwell; the instant counterproposal, then, would provide a first local radio service there. The provision of first and second local aural service to a community is a high priority in the Commission's FM channel allotment scheme. *See Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88 (1982). Moreover, these changes can be accomplished without disruption to any existing stations. At most, the counterproposal would entail slight modification to the reference point of a vacant channel in Refugio.

5. By contrast, the proposal set out in the *NPRM* would result in the allotment of a *sixth* FM channel to Victoria. Victoria already enjoys service from five commercial FM stations, three noncommercial FM stations, and two AM stations all licensed to Victoria. In view of that plethora of existing service, the Commission's well-established priorities for FM allotments clearly dictate that Voz's counterproposal is preferable to the allotment proposed in the *NPRM*.

⁹ See Oil Industry & Oil Field Equipment & Services, Austwell, Texas (TX) (<http://tx.allpages.com/austwell/industry/fuel/oil-industry-oil-field-equipment-services/>) (visited 5/10/2005); Crude Petroleum & Natural Gas, Austwell, Texas (TX) (<http://tx.allpages.com/austwell/industry/mining/crude-petroleum-natural-gas/>) (visited 5/10/2005); Water Transportation, Except Passenger, Austwell, Texas (TX) (<http://tx.allpages.com/austwell/transportation/water-transportation-except-passenger/>) (visited 5/10/2005); Austwell Aqua Farm, Inc. (<http://www.usmsfp.org/farm-websites/farms/austwell.htm>) (visited 5/5/2005).


¹⁰ See note 6, *supra*.

6. Voz hereby certifies that, if Channel 290A is allotted to Austwell, Texas, Voz has a present, good faith intention to file an application for authority to construct and operate a station on that channel, and, if that application is granted, to construct and operate a station on that channel.

WHEREFORE, for the reasons stated, Voz de la Raza proposes that the FM Table of Allotments be modified as follows (subject to reference coordinates described above):

City	Has	Proposed
Austwell, TX	--	290A

Respectfully submitted,


 /s/ Harry F. Cole
 Harry F. Cole

Fletcher, Heald & Hildreth, P.L.C.
 1300 N. 17th Street -- 11th Floor
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 703-812-0483

Counsel for Voz de la Raza

May 12, 2005

ALLOCATION STATEMENT

This is a proposal to provide a first radio service to Austwell, Texas, by a counter-proposal to MB Docket No. 05-154; RM-11224 request for sixth FM service in Victoria, Texas.

<u>City</u>	<u>Has</u>	<u>Add</u>
Austwell, Texas	-	290A

Austwell, Texas, Channel 290A

The proposed reference coordinates for Austwell Channel 290A are:

Latitude 28°23'40" North, Longitude 96°41'17" West

This site is 15 km east of the city of Austwell, Texas, where the entire city of Austwell will be served with the 70-dBμ contour as required by §73.315(a) and §73.315(b) of the FCC Rules as shown in Exhibit B. Exhibit A is an allocation study of this site as Class A. This demonstrates compliance with all requirements as set forth in §73.207 of the FCC Rules, except for 291A assignment in Refugio, Texas which was amended to 28-20-00N, 97-23-45W.

Using this reference coordinate, the coverage of this proposed site was calculated according to §73.313 of the Rules. The 60-dBu (1 mV/m) contour will encompass 1,735 square kilometers of land area and 18,076 persons. Austwell, Texas is designated as a City in the 2000 US Census (active general-purpose government) and has a population of 192 persons.

The proposed reference coordinates for Refugio Channel 291A are:

Latitude 28°19'44" North, Longitude 97°24'59" West

This site is 14.2 km east of the city of Refugio, Texas, where the entire city of Refugio will be served with the 70-dBμ as shown in Exhibit D. Exhibit C is an allocation study of this site as Class A.

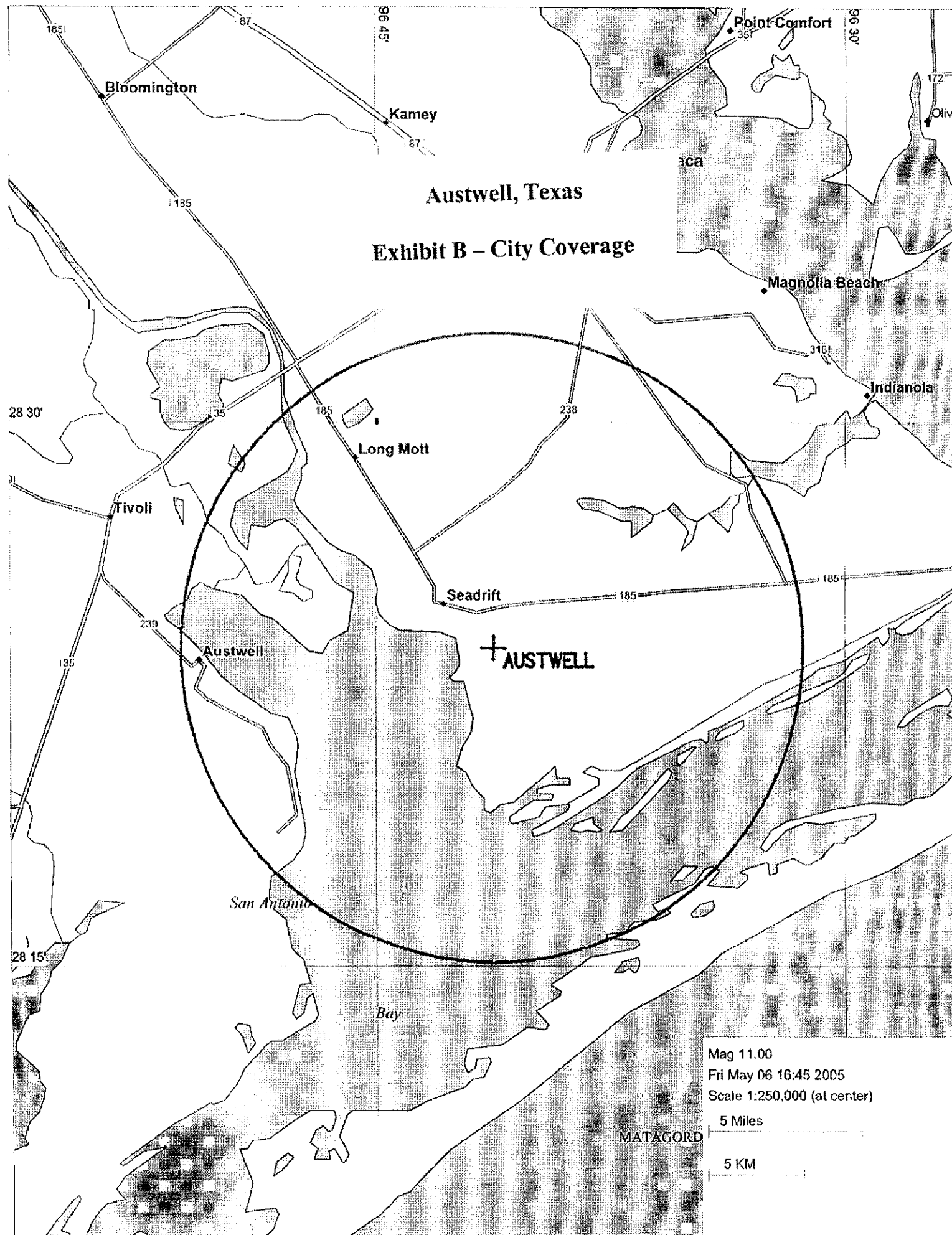
Austwell, Texas

Exhibit A -- Allocation Study

FM Study for: AUSTWELL FCC Database Date: 4/29/2005 28-23-40
 Location: AUSTWELL, TX Channel Class: A 96-41-17
 [*] by HAAT indicates calculated as missing in database.
 Call City, State Chan Class Freq kW Latitude Dist. Required
 Status Proponent File Number HAAT Longitude Azm. Clear (km)

>>>>>>> Study For Channel 290 105.9 mHz <<<<<<<<

ALLOCR VICTORIA, TX	290 A	105.9		28-52-40	61.5	115	
ADD	RM-11224		0□	96-59-54	330.5	-53.5	SHORT
KTKY REFUGIO, TX	291 C3	106.1	25.0	28-08-15	58.8	89	
LIC Fac. No. 40798	BLH-19961218KB	100□		97-12-45	241.2	-30.2	SHORT
Use of 73.215 for short spacing requires:					72	-13.2	SHORT
ALLOCR REFUGIO, TX	291 A	106.1		28-21-58	62.0	72	
DEL	RM-11224		0□	97-19-11	267.2	-10.0	SHORT
ALLOCR REFUGIO, TX	291 A	106.1		28-20-00	69.7	72	
ADD	RM-11224		0□	97-23-45	264.6	-2.3	SHORT
ALLOC REFUGIO, TX	291 A	106.1		28-19-40	71.75	72	
PROPOSED	RM-9527		0□	97-24-59	264.4	-0.25	CLOSE
ALLOCR MATAGORDA, TX	291 C3	106.1		28-44-53	94.3	89	
ADD	RM-20HM-003		0□	95-48-41	65.2	+5.3	CLOSE
KHCBFM HOUSTON, TX	289 C	105.7	100.	29-34-06	174.2	165	
LIC Fac. No. 27702	BMLED-19911024KB	492□		95-29-57	41.4	+9.2	CLOSE
KTKO BEEVILLE, TX	289 C3	105.7	25.0	28-28-16	110.3	89	
LIC Fac. No. 74442	BLH-19960314KB	100□		97-48-39	274.7	+21.3	CLEAR
KUKA SAN DIEGO, TX	290 C3	105.9	10.0	27-38-59	164.0	142	73.215
LIC Fac. No. 2818	BLH-19990421KB	126□		98-07-44	240.1	+22.0	CLEAR
KTKY TAFT, TX	293 C2	106.5	50.0	27-52-00	78.4	55	
CP Fac. No. 40798	BPH-20000613AAF	136□		97-13-08	221.8	+23.4	CLEAR
KVIC VICTORIA, TX	236 C3	95.1	13.0	28-46-55	49.6	12	
LIC Fac. No. 28477	BLH-20000501ACB	140□		96-56-29	330.1	+37.6	CLEAR

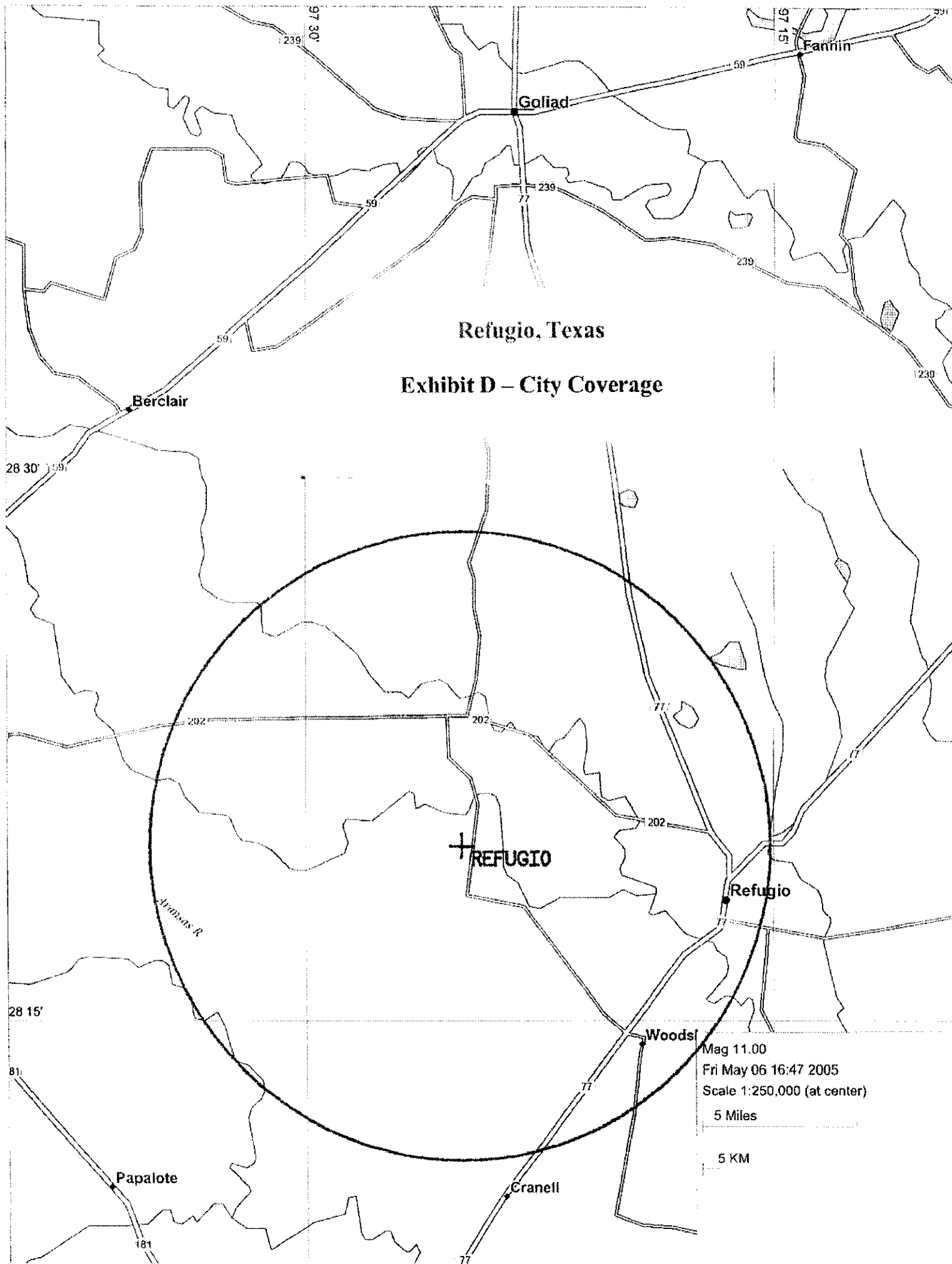


Refugio, Texas

Exhibit C – Allocation Study

FM Study for: REFUGIO		FCC Database Date: 4/29/2005		28-19-44				
Location: REFUGIO, TX		Channel Class: A		97-24-59				
[*] by HAAT indicates calculated as missing in database.								
Call	City, State	Chan	Class	Freq	kW	Latitude	Dist.	Required
Status	Proponent	File	Number	HAAT	Longitude	Azm.	Clear	(km)
>>>>>>> Study For Channel 291 106.1 mHz <<<<<<<<								
ALLOCR	REFUGIO, TX	291 A	106.1		28-20-00	2.1	115	
ADD		RM-11224		0□	97-23-45	76.3	-112.9	SHORT
KTKY	REFUGIO, TX	291 C3	106.1	25.0	28-08-15	29.2	142	
LIC	Fac. No. 40798	BLH-19961218KB	100□		97-12-45	136.6	-112.8	SHORT
	Use of 73.215 for short spacing requires: 119							-89.8 SHORT
ALLOCR	REFUGIO, TX	291 A	106.1		28-21-58	10.3	115	
DEL		RM-11224		0□	97-19-11	66.5	-104.7	SHORT
ALLOC	REFUGIO, TX	291 A	106.1		28-21-58	10.3	115	
VAC		RM-9527		0□	97-19-11	66.5	-104.7	SHORT
KTKO	BEEVILLE, TX	289 C3	105.7	25.0	28-28-16	41.74	42	
LIC	Fac. No. 74442	BLH-19960314KB	100□		97-48-39	292.3	-0.26	CLOSE
KTKY	TAFT, TX	293 C2	106.5	50.0	27-52-00	54.78	55	
CP	Fac. No. 40798	BPH-20000613AAF	136□		97-13-08	159.2	-0.22	CLOSE
ALLOCR	VICTORIA, TX	290 A	105.9		28-52-40	73.29	72	
ADD		RM-11224		0□	96-59-54	33.8	+1.29	CLOSE
ALLOCR	THREE RIVERS, TX	292 A	106.3		28-21-58	78.9	72	
ADD		RM-10662		0□	98-13-14	273.2	+6.9	CLOSE
ALLOC	GEORGE WEST, TX	292 A	106.3		28-20-33	81.3	72	
VAC		RM-10162		0□	98-14-45	271.3	+9.3	CLOSE
KUKA	SAN DIEGO, TX	290 C3	105.9	10.0	27-38-59	102.8	89	73.215
LIC	Fac. No. 2818	BLH-19990421KB	126□		98-07-44	223.1	+13.8	CLOSE

Refugio, Texas
Exhibit D – City Coverage




CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 12th day of May, 2005, I caused copies of the foregoing "Comments and Counterproposal" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following persons:

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/s/ Harry F. Cole
Harry F. Cole